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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/743,349   | 12/23/2003  | Bryan K. Casper      | INTEL-0064          | 4699             |
| 34610  | 7590        | 03/16/2007           | EXAMINER            |                  |
| KED & ASSOCIATES, LLP<br>P.O. Box 221200<br>Chantilly, VA 20153-1200 |             |                      | MOFFAT, JONATHAN    |                  |
|  |             | ART UNIT             | PAPER NUMBER        |                  |
|  |             | 2863                 |                     |                  |
| SHORTENED STATUTORY PERIOD OF RESPONSE                               | MAIL DATE   | DELIVERY MODE        |                     |                  |
| 3 MONTHS   | 03/16/2007  | PAPER                |                     |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/743,349             | CASPER ET AL.       |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Jonathan Moffat        | 2863                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 11/14/2007.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-7,9-17,19,20,22-24 and 26-36 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 1-7,9-15,17,19 and 31-35 is/are allowed.
- 6) Claim(s) 20,22-24,26-30 and 36 is/are rejected.
- 7) Claim(s) 36 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 14 November 2006 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

|  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____.                                     |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____.   | 6) <input type="checkbox"/> Other: _____.                         |

## **DETAILED ACTION**

Applicant's amendments to the claims and drawings, filed 11/14/2006, are accepted and appreciated by the examiner. In response all previous grounds for objection and rejection of the claims are withdrawn. However, in light of inspection of the claims by a new examiner, it is believed that new grounds for rejection are required.

### ***Claim Objections***

Claim 36 is objected to because of the following informalities: It appears to the examiner that the word "including" should be replaced with the word "includes". Appropriate correction is required.

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

1. Claims 20, 22-24, 26-30, 36 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

In order to constitute statutory subject matter under 35 U.S.C. 101, a method must produce a useful, tangible, and concrete result. Although capturing a waveform is certainly useful to one of ordinary skill in the art, it is not inherently tangible and concrete as data alone. A determination or calculation (which capturing appears to be) is, by itself, a purely abstract step and is not a practical application. In order to realize the results of a calculation or processing method in a real-world practical application, it is necessary to take a step or steps in order to create a tangible and concrete output useable by one of ordinary skill in the art. This includes but is not limited to storing, printing, displaying, presenting to a user, generating an alert, alarm,

or signal, or otherwise operating, controlling, or altering the functionality of further machinery, apparatuses, or processes in accordance with the calculated or prepared data.

In this situation, the practical application of the invention is as detailed on lines 9-14 of page 4 of the specification (display of waveform). The examiner recommends that the claim be amended to include a definitive and tangible step of displaying or storing the captured waveform such that it can be made available to a user or other computer function for analysis.

***Allowable Subject Matter***

Claims 1-7, 9-15, 17, 19, 31-35 are allowed.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan Moffat whose telephone number is (571) 272-2255. The examiner can normally be reached on Mon-Fri, from 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Barlow can be reached on (571) 272-2269. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

3/10/07

JM

  
John Barlow  
Supervisory Patent Examiner  
Technology Center 2800